

# EXHIBIT 3

<p>1       CONFIDENTIAL  2       IN THE UNITED STATES DISTRICT COURT  3       WESTERN DISTRICT OF MISSOURI  4       Case No. 2:06 CV 04305(NKL)  5       RONALD TUSSEY, et al.,  6           Plaintiffs,  7       vs.  8       ABB, INC., et al.,  9           Defendants.  10      -----  11  12  13  14      VIDEOTAPED DEPOSITION OF  15      R. GLENN HUBBARD  16      New York, New York  17      Friday, January 23, 2009  18  19  20  21  22  23     Reported by:  24       Toni Allegrucci  25       JOB NO. 55285</p>	<p>Page 1</p> <p>1       CONFIDENTIAL - R. G. Hubbard  2       Fidelity.  3           MR. DITTMAR: James S. Dittmar,  4       Fidelity.  5           MR. EGLAND: And Mark Egland,  6       Analysis Group.  7           MR. VIDEOGRAPHER: Will the  8       Court Reporter please swear in the  9       witness.  10      R G L E N N H U B B A R D, called as a  11       witness, having been duly sworn by a Notary  12       Public, was examined and testified as  13       follows:  14      EXAMINATION BY  15      MR. SCHLICHTER:  16       Q. State your name, please.  17       A. Robert Glenn Hubbard.  18       Q. Mr. Hubbard, when did you first  19       become involved in this case?  20       A. I believe July of 2007 was the  21       retention.  22       Q. Were you brought in by the  23       Analysis Group?  24       A. I've certainly worked with  25       Analysis Group. I was brought in by the</p>
<p>1       CONFIDENTIAL - R. G. Hubbard  2       MR. VIDEOGRAPHER: Good morning.  3       This is tape No. 1 of the videotaped  4       deposition of Glenn Hubbard, in the  5       matter Tussey versus ABB, Incorporated,  6       et al. This deposition is being held at  7       620 Eighth Avenue, New York, New York,  8       on January 23, 2009, at approximately  9       8:10 a.m.  10      My name is Pedro Placido from the  11       firm of Esquire Deposition Services and  12       I'm the legal video specialist. The  13       court reporter is Toni Allegrucci in  14       association with Esquire Deposition  15       Services. Will counsel please introduce  16       themselves for the record.  17      MR. SCHLICHTER: Jerome Schlichter,  18       Heather Lea and Troy Doles, for the  19       plaintiffs, and Mr. Steve Pomerantz is  20       sitting here at the table.  21      MS. KORDELESKI: Kathy Kordoleski,  22       ABB.  23      MR. ORTELERE: Brian Ortelere for  24       the ABB defendants.  25      MS. RAYMOND: Margaret Raymond,</p>	<p>Page 5</p> <p>1       CONFIDENTIAL - R. G. Hubbard  2       client.  3       Q. Was the Analysis Group already  4       involved at that point?  5       A. I believe they may have been, yes.  6       Q. Did they talk to you first rather  7       than the lawyers?  8       A. I'm sorry, who is "they" in the  9       question?  10      Q. The Analysis Group?  11      A. I really don't recall, sorry.  12      Q. Now, you have an arrangement, what  13       are you being compensated in this case?  14      A. \$1,000 per hour for my services. I  15       also receive what's called an "attribution"  16       based on the gross billings of  17       Analysis Group.  18      Q. An "attribution," and what is  19       the -- is that a percentage?  20      A. Yes.  21      Q. So you have \$1,000 an hour, plus a  22       percentage of the income that the  23       Analysis Group gets in this case?  24      A. No, that's not correct. I have  25       \$1,000 an hour for my own time and a</p>

<p>1     CONFIDENTIAL - R. G. Hubbard  2 percentage of their gross billings. Their  3 income is a number I wouldn't know.  4     Q. So their gross billings, what  5 percentage is that?  6     A. It would be 7.5 percent.  7     Q. And what have those billings have  8 to this point approximately?  9     A. I'm sorry, by "those billings,"  10 mine, Analysis Group?  11    Q. Those billings for which you have a  12 percentage?  13    A. The payments that I've received are  14 about \$100,000. Whether that fully catches  15 up Analysis Group and Fidelity, that would be  16 only information that I would have.  17    Q. Well, what has your billing been  18 separate from what the percentage you've  19 received from the Analysis Group in this  20 case?  21    A. I'd say since the case began it's  22 approximately 60 hours.  23    Q. Sixty hours?  24    A. Yes.  25    Q. So that's \$60,000 in flat fee?</p>	Page 8	Page 33
<p>1     CONFIDENTIAL - R. G. Hubbard  2     A. Right. I haven't received all of  3 that but, yes, that would be the time  4 accrued.  5     Q. And do you have any estimate of  6 what the Analysis Group has received?  7     A. I don't. All I would know is based  8 on my attribution, which has been about  9 \$100,000. I don't know the accrual number,  10 that's simply what I've received.  11    Q. Your attribution is \$40,000 or  12 \$100,000, the portion that's the 7.5 percent?  13    A. No. 100 -- let's step back.  14 Direct billing would be number of hours times  15 1,000, so that's the 60,000 that's accrued.  16    Q. Right.  17    A. The 100,000 is roughly what I've  18 received in attribution.  19    Q. On top of the 60?  20    A. On top.  21    Q. Okay. So if you've received  22 everything that Analysis Group has billed to  23 this point, and in trying to assess what it  24 is that Analysis Group has received, \$100,000  25 is 7.5 percent --</p>	Page 9	Page 34

<p>1    CONFIDENTIAL - R. G. Hubbard</p> <p>2    Q. Give me an approximation, was it</p> <p>3    hundreds of thousands of dollars?</p> <p>4    A. Oh, I doubt it, or I would recall</p> <p>5    something like that. It was a substantial</p> <p>6    support, I mean --</p> <p>7    Q. Hundreds of thousands or less than</p> <p>8    hundred thousand?</p> <p>9    A. Again, if I don't recall I can't</p> <p>10   recall.</p> <p>11   Q. Well, you might not recall a</p> <p>12   specific number but you might recall a range,</p> <p>13   that's what I'm asking about. Do you have</p> <p>14   any range at all? Do you have any idea?</p> <p>15   A. You know, I'm sorry, I don't.</p> <p>16   Q. Could it be \$100, \$500?</p> <p>17   A. No. I think \$100,000 would be the</p> <p>18   lower end of the range.</p> <p>19   Q. What would be the upper end?</p> <p>20   A. I don't recall.</p> <p>21   Q. Who was the money paid to, you and</p> <p>22   Mr. Coates or to Harvard or whom?</p> <p>23   A. Well, some of it would go to</p> <p>24   Mr. Coates and me, yes.</p> <p>25   Q. How much did you get?</p>	Page 35	<p>1    CONFIDENTIAL - R. G. Hubbard</p> <p>2    So was the 100,000 minimum that you</p> <p>3    are talking about and the unknown maximum</p> <p>4    what you got or what you and Mr. Coates got</p> <p>5    together?</p> <p>6    A. It's my guess about the total, but</p> <p>7    I really don't know, I mean there were</p> <p>8    payments to Analysis Group, as well, for</p> <p>9    support. Whatever Mr. Coates got, plus</p> <p>10   whatever I got, I don't know the number.</p> <p>11   Q. All right. Well, the number you</p> <p>12   are talking about is separate from what</p> <p>13   Analysis Group got, right?</p> <p>14   A. I have no idea what Analysis Group</p> <p>15   got.</p> <p>16   Q. I didn't ask that. I asked whether</p> <p>17   the number that you got, that you mentioned</p> <p>18   minimum of \$100,000 and unknown maximum, was</p> <p>19   separate from whatever it was that</p> <p>20   Analysis Group got?</p> <p>21   A. I believe I mentioned just a couple</p> <p>22   moments ago that that would be a guess for</p> <p>23   the project as a whole, I also said it would</p> <p>24   be an uninformed guess because I don't</p> <p>25   recall.</p>	Page 37
<p>1    CONFIDENTIAL - R. G. Hubbard</p> <p>2    A. Again, I just I don't recall,</p> <p>3    sorry.</p> <p>4    Q. What percent?</p> <p>5    A. Well, I would have gotten it based</p> <p>6    on whatever I billed them, but I don't recall</p> <p>7    what that is.</p> <p>8    Q. I understand what you billed them.</p> <p>9    What I'm saying is, in the division of the</p> <p>10   money between what you got and what</p> <p>11   Mr. Coates got, what was your arrangement?</p> <p>12   A. I don't know about Mr. Coates, I</p> <p>13   only know about myself.</p> <p>14   Q. Oh, so the money that you are</p> <p>15   talking about, which was at least \$100,000</p> <p>16   and you don't know the upside, went to you</p> <p>17   for that?</p> <p>18   A. Well, no. I mean I'm guessing</p> <p>19   that's for the entire project because there</p> <p>20   were other payments besides myself, but I</p> <p>21   really don't recall.</p> <p>22   Q. Well, I don't understand what you</p> <p>23   are saying. You are saying you don't know</p> <p>24   what Mr. Coates got, you only know what you</p> <p>25   got, and then you quoted those figures.</p>	Page 36	<p>1    CONFIDENTIAL - R. G. Hubbard</p> <p>2    Q. And you don't recall what you</p> <p>3    received, any estimate whatsoever?</p> <p>4    A. I really don't, no.</p> <p>5    Q. The Investment Company Institute</p> <p>6    has a self-interest in the conclusions that</p> <p>7    you reached, does it not?</p> <p>8    A. The Investment Company Institute</p> <p>9    certainly has its own point of view. This is</p> <p>10   research that's reviewed and published in an</p> <p>11   academic setting. The ultimate judges aren't</p> <p>12   the investment company.</p> <p>13   Q. That wasn't my question. That</p> <p>14   wasn't my question, Mr. Hubbard. My question</p> <p>15   was about self-interest, and we're entitled</p> <p>16   to know about it.</p> <p>17   A. It's disclosed, sir, right on the</p> <p>18   cover of the article.</p> <p>19   Q. Well, I'm asking you this question,</p> <p>20   the Investment Company Institute, I'm not</p> <p>21   talking about the fact that it's funded by</p> <p>22   them, I'm talking about the fact that they</p> <p>23   have a self-interest in the result, don't</p> <p>24   they?</p> <p>25   A. The Investment Company Institute</p>	Page 38

<p>1     CONFIDENTIAL - R. G. Hubbard  2 certainly has a point of view, yes.  3     Q. That's not my question whether they  4 have a point of view, everybody has a point  5 of view.  6     My question is whether they have a  7 self-interest in the result?  8     A. I don't know what a "self-interest"  9 means for an organization, but I would assume  10 that they have their own views about  11 competition in the mutual fund industry, if  12 that's your question.  13    Q. The Investment Company Institute  14 you know, Mr. Hubbard, promotes the mutual  15 fund industry, don't you?  16    A. They certainly are an association  17 for the mutual fund industry, sure.  18    Q. They are not-for-profit arm of the  19 mutual fund industry, set up to promote it,  20 right?  21    A. I don't know if "promote" is the  22 right word but they are certainly  23 representing that industry, yes.  24    Q. It's the representative  25 organization of the mutual fund industry,</p>	Page 39	Page 45
<p>1     CONFIDENTIAL - R. G. Hubbard  2 isn't it?  3    A. I would say sure.  4    Q. Okay. So it's the mutual fund  5 industry then which financed this report,  6 right?  7    A. They certainly provided support  8 toward the report.  9    Q. And it is possible that the  10 Analysis Group then got hundreds of thousands  11 of dollars for their work on this project,  12 isn't it?  13    A. I really don't know.  14    Q. Who asked you to do that study?  15    A. You know, I really don't recall. I  16 believe it was somebody from ICI, but I don't  17 really remember the person's name.  18    Q. Who was the then head of the ICI?  19    A. I don't know.  20    Q. All right. You believe it was  21 somebody from ICI and this wasn't something  22 that you came up with on your own then, it  23 was somebody from ICI requesting it as best  24 you recall?  25    A. No, that's not what I said. John</p>	Page 40	Page 46

1     CONFIDENTIAL - R. G. Hubbard  
 2 I don't know it for everything I work on.  
 3     Q. More than a half a million dollars?  
 4     A. Oh, no.  
 5     Q. More than 300,000?  
 6     A. You could ask me to speculate all  
 7 morning, Mr. Schlichter, I don't know.  
 8     Q. At least 100,000?  
 9     A. I really don't know.  
 10    Q. Now, did you discuss, when you were  
 11 ready to publish the article, did you discuss  
 12 at any time with Fidelity or discuss with  
 13 them or inform them of the fact that you were  
 14 about to publish an article on mutual funds?  
 15    A. I don't recall any discussions with  
 16 Fidelity. Remember, this was started  
 17 considerably before the Bennett matter. I  
 18 certainly did receive comments from an  
 19 attorney who has done work for Fidelity,  
 20 Mr. Murphy, who's cited as a commenter.  
 21 That's as close as I can think in answering  
 22 your question.  
 23    Q. You just said, remember, this was  
 24 started before Bennett, you just said you  
 25 didn't know when you started the work, you

1     CONFIDENTIAL - R. G. Hubbard  
 2 said that just a minute ago, Mr. Hubbard?  
 3     A. Again, my recollection is this is  
 4 late 2005, early 2006. The factual answer is  
 5 I didn't discuss this with Fidelity  
 6 representatives. The only person that I can  
 7 remember is Mr. Murphy, who is not a Fidelity  
 8 employee but who has represented Fidelity on  
 9 some matters.  
 10    Q. Well, let me understand then, since  
 11 you've said that, if you don't remember when  
 12 you started the work on this paper, do you  
 13 remember when you started the work on this  
 14 paper in relation to when you started to work  
 15 on the Fidelity case, the Bennett case?  
 16    A. You know, I really don't. The  
 17 paper, the ideas behind the paper are things  
 18 that John and I have been talking about a  
 19 long time, so I don't remember when an actual  
 20 start date might be.  
 21    Q. Had you given your opinions in a  
 22 report or on the record in the Bennett case  
 23 prior to the time you published this article?  
 24    A. I don't -- no. Because -- this is  
 25 all blending together -- the Bennett case

1     CONFIDENTIAL - R. G. Hubbard  
 2 deposition is this year, so far as I recall,  
 3 so no would be the answer.  
 4     Q. Well, what about the report, did  
 5 you, did you issue the report before you or  
 6 after you completed the article?  
 7     A. I believe after the completion of  
 8 the article, the article may have been  
 9 published in late '07, but the Bennett report  
 10 I believe is completed at a different time.  
 11 I'm sorry, I don't remember all these dates.  
 12    Q. All right. So let's talk about the  
 13 year 2006. In the year 2006 you are working  
 14 on this article, I believe you are sure of  
 15 that?  
 16    A. Yes.  
 17    Q. All right. In the year 2006 you  
 18 are a retained expert for Fidelity in the  
 19 Bennett case, right?  
 20    A. Yes.  
 21    Q. All right. In your report and in  
 22 your testimony in the Bennett case you opine,  
 23 among other things, on the reasonableness of  
 24 mutual fund fees and compensation, do you  
 25 not?

1     CONFIDENTIAL - R. G. Hubbard  
 2     A. Yes, of course.  
 3     Q. It's a central issue for your  
 4 report in that case, right?  
 5     A. Of course.  
 6     Q. And it's a central issue in your  
 7 article, right?  
 8     A. It's the subject of the article.  
 9     Q. It's the subject of your article  
 10 and the subject of your expert testimony?  
 11    A. Yes.  
 12    Q. So you happen to have two ongoing  
 13 matters on the same central subject of fees  
 14 and mutual funds, one in an article you are  
 15 doing, working on, and one in a report for  
 16 Fidelity you are working on, at the same  
 17 time, right?  
 18    A. I'm not sure what you mean by it  
 19 but, yes, the work is going on at the same  
 20 time, if that's your question.  
 21    Q. All right. And of course you know  
 22 that the findings that you reach would  
 23 obviously be something that could be used by  
 24 anyone in questioning you in the Fidelity, in  
 25 the Bennett versus Fidelity case?

1     CONFIDENTIAL - R. G. Hubbard  
2     A. That would be perfectly reasonable,  
3 yes.  
4     Q. "Would be perfectly reasonable."  
5 So that if you conclude fees are reasonable  
6 throughout the entire mutual fund industry,  
7 you would expect that would be asked about in  
8 your testimony in the Bennett versus Fidelity  
9 case, right?  
10    A. Yes. That wasn't the conclusion  
11 but, yes, that would be --  
12    Q. If you conclude many mutual funds  
13 have excessive fees, you could expect that  
14 would be asked about in the Bennett versus  
15 Fidelity case, right?  
16    A. Yes, of course.  
17    Q. Yet the testimony here is that you  
18 never even spoke to Fidelity about writing  
19 this article?  
20    A. You asked me had I spoken with  
21 Fidelity when I began this project, I have no  
22 recollection of that. The only recollection  
23 I have is a conversation with Mr. Murphy, but  
24 that was offering comments on the already  
25 finished article.